Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ROBERT LOUIS STEVENSON,

Petitioner,

v.

THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, THE DISTRICT OF COLUMBIA, ALBERT GONZALES, ALAN HILL, JOHNNY GAY, LEWIS HAGLER, AND DEMETRIUS COLE,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether evidence of the reasons an excessive force victim acted as he did is admissible in a section 1983 suit against the officers who allegedly used excessive force.

PARTIES TO THE PROCEEDING

Petitioner Robert Louis Stevenson was the plaintiff/appellant below. Respondents the District of Columbia, the District of Columbia Metropolitan Police Department, Albert Gonzales, Alan Hill, Johnny Gay, Lewis Hagler, and Demetrius Cole were the defendants/appellees below. The United States Department of Justice also appeared below to oppose a third-party subpoena served by Mr. Stevenson.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

INTRODUCTION 1

OPINIONS BELOW 1

JURISDICTION 2

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 2

A. The Underlying Events 2

B. The Proceedings Below 4

REASONS FOR GRANTING THE WRIT 5

I. THE COURTS OF APPEALS ARE DIVIDED ON THE ADMISSIBILITY OF EVIDENCE REGARDING THE REASONS THAT AN EXCESSIVE FORCE VICTIM ACTED AS HE DID 5

II. THIS PETITION PRESENTS A RECURRING QUESTION OF FEDERAL LAW THAT IS CENTRAL TO THE FAIR ADJUDICATION OF SECTION 1983 CASES 9

CONCLUSION 12

TABLE OF AUTHORITIES

Page

Cases:

Cummings v. Malone,
995 F.2d 817 (8th Cir. 1993) 8

Graham v. Connor,
490 U.S. 386 (1989) 5, 10

McCoy v. Payne,
1 F.3d 1246, 1993 WL 269613 (9th Cir. 1993) 9

McKenzie v. City of Milpitas,
953 F.2d 1387, 1992 WL 19813 (9th Cir. 1992) 8, 9

Michelson v. United States,
335 U.S. 469 (1948) 10

Old Chief v. United States,
519 U.S. 172 (1997) 10, 11

Palmquist v. Selvik,
111 F.3d 1332 (7th Cir. 1997) 6, 7

Rascon v. Hardiman,
803 F.2d 269 (7th Cir. 1986) 7

Saucier v. Katz,
121 S. Ct. 2151 (2001) 6

Senra v. Cunningham,
9 F.3d 168 (1st Cir. 1993) 8

Sherrod v. Berry,
856 F.2d 802 (7th Cir. 1988) 6, 7

Tennessee v. Garner,
471 U.S. 1 (1985) 6, 9

United States v. Abel,
469 U.S. 45 (1984) 11

Wallace v. Mulholland,
957 F.2d 333 (7th Cir. 1992) 7

Wierstak v. Heffernan,
789 F.2d 968 (1st Cir. 1986) 7, 8

Statutes and Rules:

28 U.S.C. § 1257 2

28 U.S.C. § 1331 4

28 U.S.C. § 1337 4

28 U.S.C. § 1983 2

Fed. R. Evid. 402 2

Fed. R. Evid. 403 11

INTRODUCTION

The respondent police officers shot at petitioner Robert Stevenson *63 times* as he attempted to drive away from them. When Mr. Stevenson sued the respondents for their use of excessive force, the district court admitted evidence that – unknown to the officers – a passenger in Mr. Stevenson's car was in possession of a submachine gun at the time of the incident. This evidence was irrelevant to the objective reasonableness of the officers' decision to use deadly force, because it is undisputed that the officers were never threatened by the gun, and were not even aware of its existence at the time of the shooting. The admission of the gun had a devastating prejudicial effect, however, because it turned a trial that should have been about the defendants' actions into a trial on Mr. Stevenson's character. As a result, a serious constitutional violation went unpunished.

The court of appeals justified that result by holding that the gun was admissible with respect to Mr. Stevenson's motive for fleeing from the police. By doing so, the D.C. Circuit split from decisions of other courts of appeals holding that evidence of the reasons an excessive force victim acted as he did is irrelevant and unfairly prejudicial. What matters is whether the facts known to the officers justified the use of deadly force; not what the victim had on his mind at the time.

This point is critical because fairness demands that the jury's attention be focused on the reasonableness of the defendants' actions – not on inflammatory evidence regarding the victim. Because the D.C. Circuit departed from this basic principle, and conflicted with decisions of other courts of appeals in doing so, this Court should grant *certiorari* to consider this important and recurring question of law.

OPINIONS BELOW

The decision of the Court of Appeals for the District of Columbia Circuit is reported at 248 F.3d 1187 and reprinted in

the Appendix ("App.") at App. 1a. The final judgment of the district court is reprinted at App. 9a.

JURISDICTION

The court of appeals issued its opinion on May 1, 2001. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution, 28 U.S.C. § 1983, and Federal Rules of Evidence 402 and 403 are reprinted in the Appendix at App. 10a.

STATEMENT OF THE CASE

A. The Underlying Events

On the evening of March 7, 1996, Robert Stevenson and Larry Wallace borrowed a Chrysler New Yorker from a friend, Anthony Moore. After running some errands, the two stopped at a McDonald's restaurant. *See* J.A. 201-02. While they were in the drive-through line, an off-duty police officer observed that the car's passenger-side window was broken. By checking the license plate number with the police department, he determined that – unbeknownst to Mr. Stevenson – the car had been stolen. The officer instructed the McDonald's staff to stall Mr. Stevenson, and called for backup. *See id.* at 300-05.

Just after Mr. Stevenson received his food, a police car pulled in front of the Chrysler. Two officers jumped out with guns drawn and began shouting. A third officer came out of the McDonald's and pointed his gun at Mr. Stevenson. A fourth armed officer approached from the rear of the Chrysler. J.A. 207, 308-09, 323-24. Terrified and unaware why the police were approaching him with guns drawn, Mr. Stevenson attempted to flee. He backed up until he bumped into the car behind him, pulled forward, back again, and turned around to flee in the opposite direction. As he turned the car around, an officer yelled "shoot, shoot, shoot." *See id.* at 207, 257, 267-68.

Officers and neutral eyewitnesses testified that the officers fired on the vehicle from the rear, as it turned to flee. *See* J.A. 242-43, 269-70, 341-43, 345, 366. A neutral eyewitness testified that the officers were three to six feet from the car when they fired. *See id.* at 261. Mr. Stevenson and a neutral eyewitness testified that the officers continued shooting even after the car came to rest. *See id.* at 208, 240-41, 243. One of the officers admitted that after the car came to a standstill, he continued to fire on it until he ran out of bullets. *See id.* at 346-47.

The officers fired at Mr. Stevenson a total of 63 times. *See* J.A. 294-99. One bullet hit a nearby car in which a pregnant woman and child were riding. *See id.* at 265-66, 272. Another bullet crashed through a McDonald's pick-up window. *See id.* at 247, 248-49, 274-75. A neutral eyewitness testified that by the time the shooting stopped, the car was "full of holes like swiss cheese . . . . Everything was shot up: the tires, the doors, the windows, the hood and the trunk." *Id.* at 252.

Mr. Stevenson was shot in his chest, left arm, right hand, and left leg. He spent a month in the hospital, and suffered permanent nerve damage, loss of mobility in his left arm, and other physical disabilities. *See id.* at 212-14, 235-36.

The officers later testified that they opened fire because Mr. Stevenson had used his car as a deadly weapon by driving toward them, and thereby put them in fear for their safety. *See* J.A. 310-11, 326-28. One officer testified that the car actually hit him, and that he was then thrown on the hood of the car before falling off. *See id.* at 350-51. In contrast, Mr. Stevenson testified that he did not point the car at the officers, but instead turned away from them in an attempt to escape. *See id.* at 232-33. The neutral eyewitnesses likewise testified that no officers were directly in front of the car, or otherwise in danger. *See id.* at 246, 254, 262. Nor did they ever see the car hit an officer. *See id.* at 243, 251, 258, 260. Even one of the officers agreed that he never saw an officer on the hood of the car. *See id.* at 330.

B. The Proceedings Below

In November 1997, Mr. Stevenson filed suit against the Metropolitan Police Department, the District of Columbia, and the five officers who were present at the scene. He alleged a number of causes of action, including claims under 28 U.S.C. § 1983 based on violations of the Fourth Amendment. The district court had federal question jurisdiction over Mr. Stevenson's section 1983 claims and supplemental jurisdiction over his state-law claims. *See* 28 U.S.C. §§ 1331 & 1367.

Before the trial began, the defendants disclosed that they intended to introduce into evidence a Cobray MAC 11 semi-automatic submachine gun that was found after the shooting on the person of Larry Wallace, the passenger in the Chrysler driven by Mr. Stevenson. This weapon measures 11½ inches from muzzle to butt, and about the same distance from the top of the gun to the bottom of the magazine. *See* J.A. 291-92.

It is undisputed that Mr. Wallace did not brandish the firearm during the shooting. It is also undisputed that none of the officers was even aware of its presence until after the shooting, when a crime scene investigator found it in Mr. Wallace's possession. Thus, the defendants stipulated that the weapon was "not a factor in the decision to use deadly force," and that "[n]o defendant was threatened" by the gun or even "observed the [gun] until after the shooting had stopped." J.A. 127, 401-02.

In light of these facts, Mr. Stevenson moved *in limine* to bar introduction of any evidence concerning the gun. Mr. Stevenson explained that because the officers were unaware of the gun at time of the shooting, the gun is irrelevant under Federal Rule of Evidence 402 and unfairly prejudicial under Federal Rule of Evidence 403. *See* J.A. 41-42. The district court denied the motion, and ruled that "Larry Wallace's possession of a gun during the events in question is more probative than prejudicial as evidence of the plaintiff's desperation, as a convicted felon on parole who is in the

presence of a firearm, to avoid arrest and his intention to use his vehicle as a weapon and is admissible in the government's case in chief." *Id.* at 116.

At trial, the district court not only allowed the defendants to present testimony that the weapon was found on Mr. Wallace after the shooting; it allowed the weapon itself to be brought into the courtroom and demonstrated in front of the jury. *See* J.A. 291-92. At the close of the trial, the jury rendered a verdict in favor of the defendants, upon which the district court entered judgment.

Mr. Stevenson then appealed to the D.C. Circuit. On May 1, 2001, the court of appeals affirmed the district court's judgment. The D.C. Circuit held that the submachine gun was relevant because "it tends to support the proposition that Stevenson was intent on escaping at all costs and in so doing placed the officers at risk." App. 6a. Thus, the court determined that "the gun was probative of an important issue in this case, namely which version of the events – Stevenson's or the officers' – was true." *Id.* at 7a. The court of appeals also upheld the district court's ruling that the unfairly prejudicial effect of the submachine gun did not substantially outweigh its probative value. *See id.* at 6a.

REASONS FOR GRANTING THE WRIT

I. THE COURTS OF APPEALS ARE DIVIDED ON THE ADMISSIBILITY OF EVIDENCE REGARDING THE REASONS THAT AN EXCESSIVE FORCE VICTIM ACTED AS HE DID.

The court of appeals' decision conflicts with holdings of other courts of appeals on the admissibility of the reasons an excessive force victim resisted arrest. The root of this conflict is this Court's holding in *Graham v. Connor*, 490 U.S. 386 (1989), that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.*

at 396; *accord Saucier v. Katz*, 121 S. Ct. 2151, 2158 (2001). The ultimate question is whether, based on the facts known to the officers at the time of the incident, deadly force is necessary to prevent "serious bodily harm or death," or to prevent the escape of a felon who "poses a significant threat of death or serious physical injury . . . ." *Tennessee v. Garner*, 471 U.S. 1, 3 (1985).

Based on *Graham* and *Gardner*, a number of circuits have held that if the defendants were unaware of the plaintiff's motivation at the time they used force, evidence of that motivation is inadmissible hindsight evidence. For example, the Seventh Circuit excludes all evidence of motive to resist arrest, even when the fact of resistance is disputed. As that court has explained, "the law in this circuit [is that] when considering a charge of excessive force, evidence outside the time frame of the shooting is irrelevant and prejudicial." *Palmquist v. Selvik*, 111 F.3d 1332, 1339 (7th Cir. 1997) (citing *Sherrod v. Berry*, 856 F.2d 802 (7th Cir. 1988) (*en banc*)).

Palmquist involved the police shooting of an emotionally distraught individual who threatened police officers with a fan blade and a pipe. The defendants sought to introduce evidence that Palmquist had informed others of his intention to commit "suicide by police." They reasoned that "this character evidence of Palmquist's 'motive' and 'intent' would allow them to present a self-defense claim, . . . and to show that Palmquist's conduct was the sole proximate cause of his being shot." *Palmquist*, 111 F.3d at 1339. The Seventh Circuit held that such evidence was irrelevant as a matter of law, and was also unfairly prejudicial:

> The excluded evidence would have shifted the jury's attention from Palmquist's behavior at the scene, which [was] material in judging the objective reasonableness of [the] use of force, to information not possessed by [the defendants] . . . . [E]vidence relating to the plaintiff's mental and emotional state . . . is not admissible in judging the use of excessive force. Because the excluded

> evidence in this case occurred outside the presence of the police, they had no personal knowledge of it.

Id. at 1340; *see also Wallace v. Mulholland*, 957 F.2d 333, 336 (7th Cir. 1992) (same); *Rascon v. Hardiman*, 803 F.2d 269, 278 (7th Cir. 1986) (same); *Sherrod v. Berry*, 856 F.2d 802, 807 (7th Cir. 1988) (reversing as abuse of discretion the admission of hindsight evidence offered under similar circumstances). For these reasons, the Seventh Circuit "absolutely forbids" the admission of evidence to show the plaintiff's motive to resist arrest. *Palmquist*, 111 F.3d at 1348 (Ripple, J., concurring in part and dissenting in part).

The Seventh Circuit's holding in *Palmquist* cannot be reconciled with the decision in this case. The D.C. Circuit not only upheld the admission of such evidence, it did so on the ground that the presence of the gun "tends to support the proposition that Stevenson was intent on escaping at all costs and in so doing placed the officers at risk." App. 6a. The Seventh Circuit has rejected that very argument. Specifically, the partial dissent in *Palmquist* argued that motive evidence "make[s] it more likely that [plaintiff's] physical behavior at the scene that night was sufficiently aggressive to create a reasonable belief . . . that deadly force was necessary." *Palmquist*, 111 F.3d at 1348 (Ripple, J., concurring in part and dissenting in part). The majority rejected that rationale – on which the D.C. Circuit now relies. *See id.* at 1340. In doing so, the Seventh Circuit cited its earlier decision in *Wallace,* which explains that what matters in an excessive force case is the objective facts perceived by the officers, "not a psychiatric prediction about how someone like [the victim] might have behaved." 957 F.2d at 336.

The First Circuit has also held that evidence of motive to resist is inadmissible. In *Wierstak v. Heffernan*, the defendants sought to introduce evidence that the plaintiff had engaged in a drug transaction before fleeing from the arresting officer, and therefore "had a motive for resisting arrest." 789 F.2d 968, 972 (1st Cir. 1986). The First Circuit held that because it was

undisputed in that case (as in this case) that the plaintiff had fled from the arresting officer, evidence of the drug transaction was irrelevant to the reasonableness of the officer's conduct. *See id.* at 973. Such evidence would simply inject a "collateral, irrelevant, prejudicial issue before the jury." *Id.* at 973.

Similarly, in *Senra v. Cunningham*, the defendants sought to introduce evidence of a fleeing suspect's prior conviction for drunk driving on the theory that it was "relevant to [plaintiff's] motivation for leaving the scene of the accident." 9 F.3d 168, 172 (1st Cir. 1993). The First Circuit rejected that contention, and explained that the plaintiff's "motivation for leaving the scene was irrelevant . . . to any disputed issue in the case." *Id.*

The Eighth Circuit has followed a similar approach in upholding the exclusion of evidence regarding the crime with which the excessive force victim was charged. *See Cummings v. Malone*, 995 F.2d 817, 823 (8th Cir. 1993). The court rejected the contention that such evidence is admissible "to explain why [the plaintiff] reacted as he did" at the time of the alleged excessive force. *Id.* at 823. Motive evidence would do "little to make it more likely that the officers, and not [the plaintiff], were telling the truth." *Id.*

In the Ninth Circuit, the question remains unsettled because different panels have rendered conflicting decisions. In *McKenzie v. City of Milpitas*, the defendants sought to introduce evidence of a prior domestic dispute that had a bearing on the plaintiff's motive to resist the police. 953 F.2d 1387, 1992 WL 19813, at *5 (9th Cir. 1992) (unpublished opinion). The Ninth Circuit held that "because none of the officers present at the . . . incident had known of the prior disputes . . . the evidence was *completely irrelevant* to the central question bearing on the constitutional issue – whether the officers had acted reasonably on that occasion." *Id.* (emphasis added).

But in *McCoy v. Payne*, a different panel of the Ninth Circuit upheld a district court's admission of evidence of the plaintiff's aggressiveness shortly before the police arrived. 1 F.3d 1246,

1993 WL 269613, at *1-2 (9th Cir. 1993) (unpublished opinion). The court reasoned that although the plaintiff's prior behavior was unknown to the police at the time, it "g[ave] rise to a very strong inference of [the plaintiff's] demeanor during the confrontation" with the officer. *Id.* at *1.

In sum, there is both an inter-circuit and an intra-circuit conflict on this important question. This Court's guidance is needed.

II. THIS PETITION PRESENTS A RECURRING QUESTION OF FEDERAL LAW THAT IS CENTRAL TO THE FAIR ADJUDICATION OF SECTION 1983 CASES.

The admissibility of motive evidence goes to the heart of the fair adjudication of excessive force claims. "The use of deadly force to prevent the escape of all felony suspects, whatever their circumstances, is constitutionally unreasonable." *Garner*, 471 U.S. at 11. Mr. Stevenson deserved to have an impartial jury consider his claim that officers of the Metropolitan Police Department violated this constitutional mandate. Otherwise, the threat of section 1983 suits could not effectively deter abuses.

Nonetheless, the focus of the trial in this case quickly shifted from the defendants' conduct to Mr. Stevenson's character. From opening through closing argument, defense counsel relied heavily on the submachine gun. *See, e.g.*, J.A. 191-92. In addition to eliciting testimony about the gun, counsel even brought the gun into the courtroom, handed it to a witness, and had the witness conduct a demonstration of the gun – all before the jury. *See id.* at 291-92.

This evidence destroyed Mr. Stevenson's ability to receive a fair trial in at least two respects. *First*, it improperly colored the jury's perception of the events by focusing their attention on a dangerous weapon, even though the officers were unaware of the weapon and neither Mr. Stevenson nor Mr. Wallace ever made any attempt to use it. *See* page 4, above. As explained

above, "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. By allowing the submachine gun into evidence, the trial judge made it impossible for the jurors to place themselves in the shoes of the officers at the scene.

Most importantly, the admission of the submachine gun encouraged the jury to absolve the police officers based solely on their personal disapproval of Mr. Stevenson and Mr. Wallace. Of course, evidence is improper if its purpose is to sway the jury based on the bad character of one of the parties. Such evidence invites the jury "to prejudge one with a bad record and deny him a fair opportunity [to litigate;] [t]he overriding policy of excluding such evidence . . . is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise, and undue prejudice." *Old Chief v. United States*, 519 U.S. 172, 181 (1997) (quoting *Michelson v. United States*, 335 U.S. 469, 475-76 (1948)).

Evidence of a person's motives for resisting arrest has precisely these effects. The crimes a person is accused of, and the other reasons he has for wanting to avoid contact with the authorities, are irrelevant to whether he subjected the police to a threat of death or serious bodily harm on the occasion at issue. The D.C. Circuit held that such evidence is relevant because there is a meaningful difference between a suspect who is intent on escaping from the police and a suspect who is intent on escaping "at all costs." App. 6a. But there is no dispute that Mr. Stevenson was attempting to flee as quickly as possible; the only question is whether the police officers were standing in his way at the time, and were thus in danger. The reasons Mr. Stevenson attempted to flee are irrelevant to that question. Thus, this is character evidence, plain and simple. And because it is evidence of criminal character, it is highly prejudicial.

Even if there were some marginal relevance to this evidence, its probative value is far outweighed by its prejudicial effect. Evidence is to be excluded when its "probative value is

substantially outweighed by the danger of unfair prejudice." Fed. R. Evid. 403. While trial courts have a degree of discretion in making Rule 403 determinations, *United States v. Abel*, 469 U.S. 45, 54-55 (1984), this Court has not hesitated to find an abuse of discretion when the circumstances call for it. In *Old Chief*, for example, this Court granted *certiorari* to resolve a recurring Rule 403 question, and held that because it was undisputed that the defendant was a felon, the details of a prior conviction were inadmissible under Rule 403. *See* 519 U.S. at 191-92. So too here, this Court should grant *certiorari* and hold that because it was undisputed that Mr. Stevenson attempted to flee, his motive for doing so should have been excluded.

Denial of *certiorari* would cause serious injustice to the victims of excessive force. All of the neutral eyewitnesses agreed that Mr. Stevenson never pointed his car at a police officer, but instead drove away from the officers. *See* page 3, above. Even one of the officers disputed the other officers' story that one of them was struck by Mr. Stevenson's car. *See id.* at 3-4. But after hearing about the Cobray MAC 11 semi-automatic submachine gun, and seeing it demonstrated in the courtroom, the jury returned a verdict for the defendants. Such evidentiary abuse must be stopped if excessive force victims are to receive fair trials.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of *certiorari*.

Respectfully submitted,

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